

KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 12, 2013

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on April 12, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Swearing in of reappointed Board members Mr. Blevins and Chairman Sapp:

Chairman Sapp and Mr. Blevins were sworn in prior to the meeting.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MARCH 8, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Mr. Gillis seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek congratulated Chairman Sapp and Mr. Blevins on their reappointments and stated the Board looks forward to continue working with them.

Mr. Sipek stated that the Personnel Board's request for funds in the form of a Special Assessment was denied. According to our Budget Analyst, the Board may need to push expenses to the next fiscal year. The Analyst advised the Board to bring back Hearing Officers in May 2013. Therefore, a Hearing Officer will be assigned to a three-day evidentiary hearing that is scheduled in May.

- ***Lemon Moore v. Transportation Cabinet* – Order in compliance with Order from Franklin Circuit Court (Civil Action No. 11-CI-1354).**

Mr. Sipek stated that in the appeal of Lemon Moore, the Franklin Circuit Court disagreed with the Board's Final Order dismissing the appeal. The Court agreed with the Hearing Officer's Recommended Order and remanded the case back to the Board to reinstate Mr. Moore. Appeal time has passed with no further action taken by the parties. Mr. Sipek recommended that the Franklin Circuit Court's Order be complied with and for the Board to accept the Final Order, by motion and vote, sustaining the appeal as recommended by the Hearing Officer.

Dr. Stevens moved to accept the Final Order on Remand sustaining the appeal to the extent therein. Mr. Hutcheson seconded and the motion carried 7-0.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington stated that the Personnel Cabinet does not have any regulation amendments today, but will have them ready for the Board meeting in May, 2013.

Ms. Bevington announced that awards (totaling \$40,000) were given to 58 state employees for submitting cost-saving ideas during the last two years at a savings of 5.4 million dollars through the Employee Suggestion System. Mrs. Madeline Abramson, wife of Lt. Governor Jerry Abramson, along with the Personnel Cabinet, recognized these employees for their cost-saving ideas. Information concerning this matter may be found on the Personnel Cabinet's website.

On January 1, 2014, the Affordable Health Care Act will take effect. The Personnel Cabinet will ensure that all eligible employees (i.e. employees that work at least 30 hours weekly) will have health care.

The Personnel Cabinet will be sending out a memorandum to remind employees that the June 30th payroll will be deferred until Monday, July 1, 2013.

The Personnel Cabinet will also be sending out a memorandum concerning its overtime policy effective Monday, April 15, 2013. In the best interest of the agencies, "planned overtime" will be implemented voluntarily by seniority by each agency's human resource office. Ms. Bevington stated that this policy will not take place of "mandatory overtime" which is needed in some positions, as Chairman Sapp pointed out.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral arguments.

5. ORAL ARGUMENTS

A. William Adkins v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, William Adkins; counsel for Appellant, the Hon. Jerry Anderson; and counsel for Appellee, the Hon. Stafford Easterling. After presenting oral arguments, the parties answered questions from the Board.

B. Shena Back v. Justice and Public Safety Cabinet (Corrections) (Passed from March Meeting)

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

C. Curtis Gamble v. Tourism, Arts and Heritage Cabinet (KSFB)

Present for oral argument were the Appellant, Curtis Gamble, and counsel for Appellee, the Hon. Ellen Benzing. After presenting oral arguments, the parties answered questions from the Board.

D. Catherine Partlow v. Justice and Public Safety Cabinet

Present for oral argument were the Appellant, Catherine Partlow, and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

E. Dottie Stone v. Justice and Public Safety Cabinet (Juvenile Justice)

Present for oral argument were counsel for the Appellant, Hon. Paul Fauri, and counsel for Appellee, the Hon. Wesley Duke. After presenting oral arguments, the parties answered questions from the Board.

6. MOTIONS

- A. Jenny Howard v. Cabinet for Health and Family Services
 - a. Appellant's Motion to Remand the Appeal for Further Hearing
Appellee's Response to Motion to Remand
 - b. Appellant's Motion to Strike Appellee's Response to Exceptions
Appellee's Response to Motion to Strike
Appellant's Reply to Response to Motion to Strike (Withdrawing motion)

Mr. Sipek advised the Board members that they have received copies of all the motions concerning the Jenny Howard appeal. Mr. Sipek asked whether the Board wanted to discuss this matter in open or closed session. The Board members agreed to discuss these motions in closed session.

7. INVESTIGATIONS

A. Update on Department of Agriculture Investigation

Mr. Sipek advised that he conducted nine more interviews of witnesses and interviews are almost completed. However, Mr. Richie Farmer, by counsel, has declined to participate in the investigation. Mr. Sipek stated he will continue to examine and gather documents.

Mr. Crocker stated that since the last meeting the Ethics Commission has taken action and charged various former employees of the Department of Agriculture.

B. Michael O'Brien Request – Justice and Public Safety Cabinet (DJJ) --Appellee's Response (Follow-up) (Moved to May by request of Appellant)

Chairman Sapp asked Mr. Sipek to provide some background regarding Mr. O'Brien's request. Mr. Sipek advised that Mr. O'Brien is satisfied with the amount of back pay. However, there is still the issue of whether he is owed reimbursement for COBRA payments made while he was off work. If an agreement cannot be reached, the parties will be present next month to address the issue.

C. Transportation Reorganization Investigation - Requests to Investigate from Randall Arvin and Bill Madden

Mr. Sipek stated that all appeals concerning the reorganization in 2008 have been resolved.

Per Senate Bill 182, the reorganization was passed and approved by the Legislature. There are no KRS Chapter 18A merit system issues for the Board to review, as the reorganization was in compliance with the law. Mr. Sipek advised that since any issues were resolved by individual appeals, this request should be denied.

Mr. Blevins moved to decline the requests for investigation. Mr. Hutcheson seconded and the motion carried 7-0.

8. **CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Gillis seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:30 a.m.)

Mr. Gillis moved to return to open session. Ms. Herndon seconded and the motion carried 7-0. (1:00 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. William Adkins v. Justice and Public Safety Cabinet [Corrections] (2012-153)

Judge Chandler moved to note Appellee's Exceptions and oral arguments and to accept the recommended order sustaining the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

B. Shena Back v. Justice and Public Safety Cabinet [Corrections] (2012-101) **(Passed from March Meeting)**

Mr. Blevins moved to note Appellee's exceptions, Appellant's response, and oral arguments and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 7-0.

C. Curtis Gamble v. Tourism, Arts and Heritage Cabinet [KSFB] (2012-109)

Mr. Gillis moved to note oral arguments and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

D. Catherine Partlow v. Justice and Public Safety Cabinet [Corrections] (2012-166)

Mr. Hutcheson moved to note Appellee's exceptions and oral arguments and to defer this matter to the next Board meeting. Mr. Blevins seconded and the motion carried 7-0.

E. Dottie Stone v. Justice and Public Safety Cabinet [Juvenile Justice] (2012-034)

Ms. Herndon moved to note Appellant's exceptions, Appellee's response, and oral arguments and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 7-0.

F. Jenny Howard v. Cabinet for Health and Family Services (2012-203)

1. Judge Chandler moved to deny Appellant's motion to remand the appeal for further hearing. Mr. Hutcheson seconded and the motion carried 7-0.

2. Mr. Blevins moved to reject Appellant's motion to remove the hearing officer. Mr. Hutcheson seconded and the motion carried 7-0.

3. Mr. Hutcheson moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

G. Oda Barnes v. Cabinet for Health and Family Services (2012-060)
(Deferred from March Meeting)

Mr. Gillis moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 7-0.

H. Scherry Griffin v. Cabinet for Health and Family Services (2011-227)
(Deferred from February)

Judge Chandler moved to note Appellant's exceptions, Appellee's exceptions, Appellant's response, Appellee's response and oral arguments and to accept the Final Order Altering the recommended order and sustaining the appeal to the extent therein, as attached to the minutes. Ms. Herndon seconded and the motion carried 7-0.

I. Earl D. Gardner v. Transportation Cabinet (2011-193)

Mr. Blevins moved to note Appellee's exceptions, Appellant's response, and to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 7-0.

J. Vickie Brockman v. Cabinet for Health and Family Services (2012-079)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 7-0.

K. Vickie Brockman v. Cabinet for Health and Family Services (2012-081)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 7-0.

L. John Carter v. Transportation Cabinet (2012-061)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

M. Helen Cowherd v. Justice and Public Safety Cabinet [Corrections] (2012-202)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 7-0.

N. Antoinette Hills v. Cabinet for Health and Family Services (2012-121)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

O. Cary Lyle v. Tourism, Arts and Heritage Cabinet [Parks] (2012-135)

Mr. Hutcheson moved to accept the Hearing Officer's recommended order sustaining the appeal to the extent Appellant be given a 5-day suspension. Dr. Stevens seconded and the motion carried 6-1, with Chairman Sapp opposing; stating the 20-day suspension given to Appellant by the Agency should be upheld.

P. Malissa Mollett v. Cabinet for Health and Family Services (2012-013)

Judge Chandler moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

Q. Christopher Dugger v. Personnel Cabinet

R. Laura Moreno v. Cabinet for Health and Family Services

S. Tara Walker v. Cabinet for Health and Family Services and Personnel Cabinet

T. Peggy Washington v. Education and Workforce Development Cabinet (3 appeals)

U. John Abrams v. Tourism, Arts and Heritage Cabinet (KSFB)

Mr. Blevins moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Herndon seconded and the motion carried 7-0.

10. **WITHDRAWALS**

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 7-0.

- A. R. Wayne Baldwin v. Cabinet for Health and Family Services
- B. Korey Kopp v. Justice and Public Safety Cabinet and Personnel Cabinet
- C. Denise Ludwig v. Department of Military Affairs and Patrick Hardesty
- D. Kerry Russell v. Transportation Cabinet (2 appeals)
- E. Lawrence Simpson v. Justice and Public Safety Cabinet
- F. Travis Wallace v. Education and Workforce Development Cabinet and Personnel Cabinet
- G. Rhonda Pedigo v. Cabinet for Health and Family Services

11. **SETTLEMENTS**

Mr. Gillis moved to accept settlements “A,” “C,” “D” and “E” as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Dr. Stevens seconded and the motion carried 7-0.

- A. Thomas Burling v. Transportation Cabinet
- C. Donna Sego v. Transportation Cabinet
- D. Debbie Tyson v. Labor Cabinet and Personnel Cabinet
- E. Connie Zeiter v. Tourism, Arts and Heritage Cabinet (Parks)

Judge Chandler moved to accept settlements “B” and “F” as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Mr. Hutcheson seconded and the motion carried 6-1, with Mr. Gillis opposing.

- B. Mary Morgan v. Justice and Public Safety Cabinet (Corrections)
- F. James Cooper v. Tourism, Arts and Heritage Cabinet (Parks)

12. **OTHER**

Mr. Crocker advised that Hearing Officer training is next month on May 17, 2013, if anyone is interested in attending.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Dr. Stevens seconded and the motion carried 7-0. (1:10 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Donald W. Blevins, Member

Ramona Herndon, Member